
(2024) 10 CESTAT CK 1193

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.50446 of 2024

**M/s. Mahavir Logistics @APPELLANT @Hash Commissioner of Customs
(Airport & General) @RESPONDENT**

Date of Decision : 15-10-2024

Acts Referred:

Customs Broker Licensing Regulations, 2018 — Regulation 10(n), 18

Citation : (2024) 10 CESTAT CK 1193

Hon'ble Judges : Binu Tamta, Member (J); Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : T. Chakrapani, Girijesh Kumar

Final Decision : Allowed

Judgement

Binu Tamta, J

1. The appellant has assailed the order-in-original no.16/ZR/Policy/2024 dated 19.02.2024 imposing penalty of Rs.50,000/- under Regulation 18 of Customs Broker Licensing Regulation, 2018, CBLR, 2018

2. The investigation was initiated by the Customs Preventive, New Delhi following an alert from the National Customs Targeting Centre (NCTC) regarding a high-risk import by M/s.Aparna Overseas under Bill of Entry No.3742746 dated 14.12.2022. The consignment was declared as "PP Regrind". However, upon examination, it was found to contain mis-declared and prohibited goods, including "E-Cigarettes" concealed with the declared goods. The consignment was imported under the Importer Exporter Code (IEC) of M/s. Aparna Overseas, but Shri Ashok Kumar was identified as the actual beneficiary.

3. M/s. Mahavir Logistics being the Customs Broker, CB filed the Bill of Entry for this consignment. It was alleged that the CB failed to fulfill its obligations under Regulation 10(n) of the CBLR, 2018, as they did not verify the antecedents of KYC of the actual beneficiary, Shri Ashok Kumar, who was handling the import in place of the declared importer, M/s. Aparna Overseas.

4. A show cause notice dated 29.08.2023 was issued to the CB proposing the

revocation of their Customs Broker License No.R-23/DEL/CUS/2021, forfeiture of security deposit, and imposition of a penalty under CBLR, 2018. The Inquiry Officer in his report dated 22.11.2023 concluded that the CB had failed to conduct due diligence regarding the actual beneficiary of the consignment. The Inquiry Officer found that the CB, despite knowing that Shri Ashok Kumar was the actual beneficiary of the consignment, did not obtain proper authorization or KYC documentation for him. The CB only dealt with Shri Ashok Kumar and failed to verify his credentials, which was a violation of Regulation 10(n) of CBLR, 2018.

5. The Adjudicating Authority by the impugned order concluded that although the CB had completed the KYC verification for the importer (M/s.Aparna Overseas), they failed to take proper steps to verify the identity and authorization of Shri Ashok Kumar, who was acting as the beneficiary of the consignment. The case highlights the failure of the Customs Broker to fulfil their obligation under Regulation 10(n) of CBLR, 2018, by not verifying the beneficiary's credentials. However, considering the cooperation by the CB during the investigation and other mitigating factors, the penalty imposed was limited to Rs.50,000/- and neither the licence was revoked nor security was forfeited. The appellant has filed the instant appeal before this Hon'ble Tribunal.

6. Heard Shri T. Chakrapani, learned Consultant for the appellant and Shri Girijesh Kumar, Authorised Representative for the respondent and perused the records of the case.

7. The submissions of the learned counsel for the appellant is that it is an admitted position that CB did not contravene the provisions of Regulation 10(n) as they produced the KYC documents along with authorization from the importers and also all other documents required in that regard. The CB had verified the address of the importer and met the importer and also the KYC documents were duly verified. At the time of investigation, the importer was available at all times. The CB having duly fulfilled his obligations cooperated with the Department, therefore, the penalty imposed is unsustainable. Learned counsel for the appellant has taken us through the various observations made by the Inquiry Officer as well as by the Adjudicating Authority, whereby it has been concluded that the CB has acted with due diligence about the importer as far as the KYC formalities are concerned.

8. The learned Authorised Representative for the Department reiterated the findings of the Inquiry Officer and the Adjudicating Authority that the CB did not obtain any authorization from M/s. Aparna Overseas (Importer) for Shri Ashok Kumar or verify his KYC details. The Learned Authorised Representative relied on the findings that the CB had received all the documents from Shri Ashok Kumar and he had stated in his statement dated 04.02.2023 that in his opinion, Shri Ashok Kumar was the actual beneficiary and, therefore, the CB ought to have verified the KYC requirements of Shri Ashok Kumar. Learned Authorised Representative submitted that no interference is called for in the impugned order as the punishment imposed is absolutely appropriate. In the facts of the case,

imposing only the penalty of Rs.50,000/- and dropping the proposal for revocation of the licence and the forfeiture of the security cannot be found to be faulty.

9. The issue for consideration is whether the appellant had violated the provisions of Regulation 10(n) of CBLR, 2018. To appreciate the issue, Regulation 10(n) is quoted below:-

“Regulation 10(n) of CBLR, 2018 -- A Customs Broker shall –

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.”

10. Perusal of the aforesaid provisions show that the obligation on the Customs Broker is to verify the correctness of the IEC number, GSTIN and the identity of his client and functioning of his client at the declared address. Both the inquiry officer and the Adjudicating Authority had recorded the finding that the CB has obtained all the KYC documents of Shri Arun Goel, proprietor of M/s. Aparna Overseas (importer). Even in the show cause notice, it has been noted that the CB had produced the KYC documents along with authorisation from the importer. It has also come on record that the CB contacted the importer and made inquiry about their IEC and KYC details and also verified their address. The provisions of Regulation 10(n) imposes the obligation on the CB only qua their client, which in the present case is the importer, in respect of whom the importer here fulfilled all the responsibility. Thus, the CB complied with the obligations as per Regulation 10(n) and thereby acted with due diligence. Consequently, there is no contravention of the said provisions.

11. Further, from the records of the case, it appears that CB provided the mobile numbers of Ashok Kumar, his wife and son, and also the residential address, Card number and also provided necessary assistance, which enabled the Investigating Authority to trace out Shri Ashok Kumar. The fact that the consignment contained E-Cigarettes revealing mis-declaration of goods was promptly informed by the CB to the departmental officers. The Investigating Authorities were able to examine Dr. Rajesh Kumar and the CB several times. All this is sufficient to show that the CB duly cooperated with the department. Once there is no violation of the provisions of Regulation 10(n), there is no justification to impose any punishment under the provisions of CBLR.

12. The Adjudicating Authority proceeding on the footing that CB was aware that Shri Ashok Kumar was the actual beneficiary as he was contacted by Shri Ashok Kumar, it was incumbent on the CB to have asked for the authorisation from the importer in favour of Shri Ashok Kumar and to have obtained the KYC documents of Shri Ashok Kumar being the beneficiary, have traveled beyond the ordinary requirements under CBLR Regulations, which only requires the CB to satisfy himself to the genuineness of the clients whom he is serving and which has not

been found to be lacking. There is no such obligation on the CB to act as an Investigating Agency and determine the actual beneficiary before undertaking the job. In fact, the Adjudicating Authority having categorically noticed that the object of these proceedings is not to identify the beneficial owner but to examine whether CB was compliant of Regulation 10 (n) or not and in that regard concluded that the CB acted with due diligence about the importer, as far as the KYC formalities are concerned. The Adjudicating Authority exceeded in observing that the discussion on beneficial owner became unavoidable as the Inquiry Officer has recorded a finding regarding identification of Ashok Kumar, as a beneficial owner. The scope of jurisdiction while dealing with the violations by the CB is restricted to the specific provisions of the CBLR Regulations. The Adjudicating Authority having concluded that the identity or existence of the importer is not in dispute or it is not the case where the importer is absconding and the fact that the CB was sincere at every stage in cooperating with the Investigating Agency, there is no justification for imposing penalty on the CB.

13. The other aspect which needs to be appreciated, as discussed by the Adjudicating Authority is quoted below:

"23.7 I notice that the CB in his statement dated 04.02.2023 in response to the query "Who is the actual beneficiary of this smuggling of E-Cigarette?" stated I have been contacted by Shri Ashok Kumar only and as he was concerned with the clearance of the goods covered under Bill of Entry No.3742746 dated 14.12.2022 then in my opinion he is the actual beneficiary of the goods imported on the strength of IEC of M/s. Aparna Overseas. The facts of the case reveal that the proprietor of Aparna Overseas sub-let his IEC to one Dr. Rajesh Mishra who further lent Rs.8 lakhs to Ashok Kumar for import of dates. According to the said Dr. Mishra, he had given the said amount to Ashok for import of dates and not for import of PP regrind or e-cigarettes. Thus, as per the investigations, it was Dr. Mishra who had made the requisite investment in this consignment. CB was not aware of the backend machinations between IEC holder, Dr. Mishra and Ashok Kumar. He was only dealing with Ashok. Therefore, it was reasonable of him to suspect that Ashok Kumar was the beneficial owner. Investigation has not recorded any statement of Shri Ashok. Inquiry Officer's determination that Ashok Kumar is the beneficial owner is merely based on the opinion of CB. Basis of EXIM trade is commerce which operates on the principle of profit. Normally, it is the person who makes the investment or who finances the consignments who control the consignment and is thus the beneficial owner. Another unmistakable clue to settle the question would have been to ascertain as to who sent the remittances for the consignment. However, those details are not available. Therefore, it is highly debatable whether Dr. Rajesh Mishra or Ashok Kumar is the beneficial owner? In fact, despite the efforts of the investigating authorities, the freight forwarder of the seized consignment, M/s. Aahil Shipping and Logistic Pvt. Ltd. has not provided details of the person who contacted them for import of goods contained in Container No.CRSU9140273. Therefore, in view of these reasons, the finding of the Inquiry Officer regarding identification of the

beneficial owner is not infallible. I may hasten to add that the object of these proceedings is not to identify the beneficial owner but to examine whether CB was compliant of Regulation 10(n) or not in the context of the facts of this case. However, I had to allude to this since inquiry officer has based his findings/recommendations on the identification of Ashok as the beneficial owner. Therefore, discussion on beneficial owner became unavoidable.”

The contents of the above para are self explanatory that it is pursuant to the investigations conducted that the actual facts came to light that it was Dr. Mishra, who was involved in this consignment. It is too much to be attributed that CB should have been aware of the entire link and modus operandi between the IEC holder, Dr. Mishra and Shri Ashok Kumar.

14. We are, therefore, of the opinion that it is highly improper to impose a burden on the CB to verify, who is the actual beneficiary in a transaction. The CB cannot be expected to act as an investigating agency and go beyond his obligations of verifying the KYC of his client. Both the Enquiry Officer and the Adjudicating Authority have laid unnecessary emphasis on the statement made by the proprietor of the CB that in his opinion, he is the actual beneficiary of the goods. Mere opinion at a later stage when the goods were found to be mis-declared is not sufficient to bring the contravention of the provisions of Regulation 10(n). The fact that Ashok Kumar was coordinating with the CB, the CB was under the bonafide belief that he was merely a representative of the importer or IEC holder. We find that in the show cause notice the only allegation made against the appellant is the violation of the provisions of Regulation 10(n) of CBLR, 2018 and a finding to that effect has been recorded in favour of the appellant.

15. The impugned order in so far as it imposes the penalty of Rs.50,000 on the CB is unsustainable and we, therefore, set aside the same. Consequently, the appeal stands allowed.

[Order pronounced on 15th October, 2024]